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STATE FOR NEA/MAG AND S/WCI

E.O. 12958: DECL: 12/18/2015

TAGS: [PREL](#) [PTER](#) [KAWC](#) [LY](#)

SUBJECT: GUANTANOMO DETAINEES: LIBYANS PROVIDE DIPNOTE RESPONSE

REF: A) TRIPOLI 623 B) STATE 194752

CLASSIFIED BY: Ethan A. Goldrich, Deputy Principal Officer, USLO
Tripoli, State.

REASON: 1.4 (b), (d)

¶1. (S) We received a draft MOU in response to reftel dip note regarding the proposed transfer of Libyan national, Abdul Rauf Omar Mohammed Abu Al Qusin, also known as Abu Abdul Rauf Zalita to the exclusive custody and control of the Government of Libya, under circumstances satisfactorily confirmed in an exchange of diplomatic notes between the USG and Libyan government that will ensure he will not pose a continuing threat to the USG or the GOL. The MOU was provided in Arabic and the text of the USLO translation is in para 5.

¶2. (C) The draft MOU addresses USG concerns that the individual be treated humanely and in accordance with the laws and international obligations of Libya. It also addresses the issue of providing confirmation that the GOL is abiding by its commitments by referencing a "Watchdog Committee."

¶3. (C) However, it does not provide any of the other written guarantees the USG has requested. The draft MOU lacks any written guarantee that Libya will take necessary steps to ensure that the individual does not engage in or facilitate terrorist activity and thus continue to pose a threat to the international community, Libya and the United States. Neither does the draft MOU include any written guarantee that the USG would continue to have access to the individual or any intelligence obtained during investigation, prosecution or surveillance of the individual. The Preamble to the draft MOU states that the guarantees are provided in the context of the global war on terrorism and intelligence exchanges, but this falls short of the written guarantees requested by the USG.

¶4. (S) On several occasions since November 14, we have asked the Libyan MFA (GPFLIC) to explain the deletion of language from the draft we provided on October 27. They eventually told us that COM may receive an explanation in an as yet unscheduled meeting with the head of the External Security Organization (ESO). We will report any further explanation we receive.

¶5. (C) Begin text of unofficial USLO translation of MOU and attached Note Verbale:

The Great Socialist People's Libyan Arab Jamahiriya
The General People's Republic
For Foreign Liaison and International Cooperation
Note Verbale

The General People's Secretary for Foreign Liaison and
International Cooperation (General Office for the Americas)
presents its compliments to the USLO in the Great Jamahiriya:

And has the honor to enclose herewith a draft Memorandum of Understanding between the General People's Secretary for Foreign Liaison and International Cooperation in the Great Jamahiriya and the US Department of State as regards with the assurances provided relating to the transferred people.

The General Office for the Americas requests from the esteemed USLO to relay the draft to the relevant entities in the US to examine and express their views thereof.

The General People's Secretary for Foreign Liaison and International Cooperation (General Office for the Americas) avails itself of this opportunity to renew to the esteemed USLO its highest considerations.

(Seal of the General People's Secretary for Foreign Liaison and International Cooperation)

To: USLO

Tripoli: November 14, 2005

Draft Memorandum of Understanding
Between the General People's Secretary for Foreign Liaison and International
Cooperation in the Great Socialist People's Libyan Arab
Jamahiriya
And
The US Department of State
As regards the assurances provided relating to the transferred
people.

Preamble:

Within the framework of combating terrorism, exchanging of security information between the Specialized Security Entities in both countries, and promoting the international efforts in the field of Global War waged by the world to put an end to

terrorism and terrorists wherever they are, and whatever their nationalities or their origins, and facilitating the process of exchange and handing over of individuals indicated in terrorist crimes or suspected of engaging in such crimes,

Both parties have agreed to the following:

Article One

Definitions:

1-Forwarding country: is the country which has a terrorist individual or suspect of having relations to terrorist actions, not of its nationals holding its citizenship, and who it wishes to deport outside its territories.

2-Receiving country: is the country which accepts to receive the deported individual - whether he/she holds its citizenship or not, or it is his/her place of residence - or any other national from another country both parties agreed to deport and receive.

3-Assurances: are the rights and commitments requested by the departing country (forwarding country) from the receiving country for the benefit of the (deportee) as of treatment, accommodation, investigation, trials, arrest, imprisonment, enforcement of prison sentences, and the compliance with the human rights principles and so forth of rights that respect the humanity of the individual.

4-Requests: are the requirements presented by the forwarding country through its Department of State to the receiving country via its Ministry of Foreign Affairs, or what is covered through the diplomatic channels as usual in relation to the subject matter of this memorandum, and the written response from the receiving country to the forwarding country as regards the receipt of the (deportee) as soon as possible.

5-The Watchdog Committee: a group of people having qualifications in law, psychology and social fields of specialization to be chosen equally from both countries.

Article Two:

If the deported individual has been previously tried, indicted and sentenced in absentia by the receiving country, his/her judgment in absentia will be nullified as soon as he/she is deported and arrives at its territories. And procedures of his/her retrial is to be resumed.

Article Three:

The receiving country guarantees, within reach of its national

laws, not to execute the capital punishment, if it was pronounced in a final verdict against the deportee.

Article Four:

When one of the entities (organs) of the receiving countries arrests the deportee, or commits him/her to jail, this will be done according to laws in vigor, and in locations where healthy conditions, and proper food are provided, and his/her treatment will be suitable and humane, in line with the international customary rules.

Article Five:

When one of the state organs arrests the deportee in the receiving country, he/she will be immediately notified as of the reason of his/her arrest, and the charges leveled against him/her. The arrested person shall have the right to contact his/her attorney immediately.

Article Six:

Any one of the State security organs that undertakes the arrest of the deportee, shall undertake to refer him/her to the specialized office of the attorney general within the limited period stipulated by the law.

Article Seven:

There shall be no constraints or obstacles for the deported person to use his/her right, in the receiving country, to contact the Watchdog Committee.

Article Eight:

The deportee shall have the right, in the receiving country, to practice his/her own religious rituals whether in confinement or outside.

Article Nine:

Should the deportee be indicted in the receiving country with any criminal charges, he/she will be tried in front of the specialized courts and to provide him/her with all the necessary assurances (fair trial, public hearings, and an attorney to plead for him/her in case he/she does not have his/her own chosen attorney, and to allow him to prepare his/her challenges, to call his/her own witnesses, as well as to be informed about the contents of all the case files. And he/she shall have the right to appeal the verdicts and to repeal them up to the level of the Supreme Court).

Article Ten:

In the receiving country, verdicts in any criminal cases are pronounced against the deportee in public. Audience and media can be kept away from part or all of the court proceedings, and to prevent them from attendance, in observation of the public order, the public etiquette, and the national security.

Article Eleven:

Both countries shall have the right to withdraw from the present Memorandum, and in the time to be agreed upon when signing the provisions of this document. However, all the rights and assurances given to the deportee in the receiving country shall remain in vigor.

Article Twelve:

The present document is drafted into two copies having the same binding legal effect one in Arabic, the other in English, and both copies shall be signed by the entrusted people.

End Text.

BERRY

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